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Are Insurers Entitled to a Special Jury Instruction on the "Genuine Dispute" Defense? Maybe not, according to a Recent California Court of Appeal Decision.

By Amy Briggs and Erin Stagg

Insurers who intend to rely on the "genuine dispute" doctrine may not be entitled to a special jury instruction delineating the elements of that defense. At least one appellate court in California has held that whether there was a "genuine dispute" as to coverage, thereby exculpating the insurer from bad faith liability, is subsumed within standard jury instructions as to whether the insurer acted "reasonably," the linchpin of any bad faith claim. Accordingly, the Second Appellate District in *McCoy v. Progressive West Ins. Co.*, 09 C.D.O.S. 2474, _ Cal. App. 4th _ (February 27, 2009), held that the trial court did not commit prejudicial error in refusing to give that instruction, over the insurer's objection.

This potentially significant decision arises out of the apparent theft and ultimate destruction of the plaintiff insured's car in Las Vegas. The carrier did not pay the claim due to some evidence that the insured himself may have been involved in the theft. For instance, the ignition showed no signs of tampering. The burned car, when recovered, still had expensive tires on it. And the insured and a friend – for unexplained reasons – had driven two separate cars to Las Vegas from California to meet for the weekend.

The insured sued for, inter alia, bad faith based on the insurer's failure to promptly, fairly and fully investigate his theft claim and for unreasonably and without cause withholding benefits due under the policy. The insurer – citing the evidence detailed above as well as testimony that the insured had been involved in a prior, fraudulent submission (which the trial court ultimately excluded) – requested a "genuine dispute" special jury instruction. That instruction

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would have provided that “when an insurer denies or delays payment of policy benefits due to the existence of a genuine dispute with its insured as to the existence of coverage liability, the insurance company will not be liable in bad faith. . . .” The instruction also set forth factors to be used in determining whether a genuine dispute existed in the first instance. The trial court refused, finding the “genuine dispute” doctrine subsumed within the concept of what is reasonable and unreasonable as set forth in California’s standard jury instructions.

The jury subsequently awarded punitive damages against the carrier.

On appeal, the *McCoy* court upheld the trial court’s refusal to give Progressive’s requested “genuine dispute” special jury instructions. The *McCoy* court noted that “the linchpin of a bad faith claim is that the denial of coverage was unreasonable.” The “genuine dispute” rule does not, however, relieve an insurer from its obligation to fully and fairly investigate, process and evaluate claims. Rather, a “genuine dispute” exists “only where the insurer’s position is maintained in good faith and on *reasonable* grounds” (emphasis added). Accordingly, the appellate court concluded that the trial court had adequately instructed the jury on the issue of reasonableness and no further instruction was necessary.

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